

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE KADUNA JUDICIAL DIVISION
HOLDEN AT KADUNA
ON THURSDAY THE 12TH DAY OF JULY 2012
BEFORE THE HONOURABLE JUSTICE M. L. SHUAIBU
JUDGE

CHARGE NO. FHC/KD/70^c/2011

BETWEEN

FEDERAL REPUBLIC OF NIGERIA - COMPLAINANT

AND

MUHAMMAD AL'AMEEN AL'HALEEL - ACCUSED PERSON

Accused in Court;

Austin Jackpor (with J.O. Uzor) for the Prosecution;

Solomon Utuagha for the Accused;

JUDGMENT

By an Amended Charge dated the 30th day of November, 2011, the above-named Accused stood trial on Seven (7) Counts Charge of Conspiracy, Obtaining by False Pretence, False Declaration and Forgery. The Prosecution called Eight (8) Witnesses and tendered several Exhibits. The Defence on his part called two Witnesses. In the end the respective Counsel filed and adopted their Final Addresses.

In his Final Address, the Learned Defence Counsel Mr. Katu identified the following issues:

1. Whether from the totality of the evidence adduced by the Prosecution, he has been able to successfully discharge the burden of proof on him in relation to the offences alleged against the Accused?
2. If the answer to the above is to the affirmative, whether the Prosecution has from the testimony of his witnesses been able to prove the allegation against the Accused person beyond reasonable doubt?

Respecting the allegation of conspiracy, Mr. Katu argued that the basic elements are as follows:

- a) There must be an agreement by two or more persons;
- b) To commit an illegal act; or
- c) To commit a legal act through an unlawful means, relying on *Shodiya Vs State (1992) 3 NWLR (Prt. 230) 457*. And that the Prosecution has woefully failed to prove the ingredients of the offence of the conspiracy in that none of the Prosecution witnesses

told this Court that the Accused person agreed at any point in time with any person or group of persons to commit any of the offences mentioned in the charge sheet. Reliance was placed on the evidence of PW4 to the effect that Mr. Smith who is his good friend introduced him to the Accused person, nothing more. Also DW1 told the Court that he never knew Mr. Smith until the day his student who testified as DW2 introduced Mr. Smith to him. Thus, the Prosecution has woefully failed to prove any nexus between the Accused and the said Mr. Smith to warrant the inference of any conspiracy between them. Reliance was placed on *Emeka Vs State (1998) 7 NWLR (Prt. 559) 556*.

On the allegation of obtaining by false pretence the sum of N10,000,000.00 and N50,000,000.00 at different times, the ingredients of the offenses according to Mr. Katu are:

1. That the Accused person had the intent to defraud;
2. That the Accused person presented himself falsely;
3. That the Accused person did obtain property from any other person in Nigeria or in any other country for himself or any other person.

It was submitted that none of the Prosecution witnesses was able to show or prove any of the above ingredients. Specifically, PW1 did not in anyway state that the Accused had an intention to defraud; neither did he present himself to him as a person different from the person he is known to be. On his part, PW4 said he personally delivered \$320,000.00 to the Accused which he later changed. PW8 stated that while investigating the nominal complainant, he made several attempts to bribe him which fact according to Mr. Katu shows that the nominal complainant is capable of doing anything to escape justice. The Accused on his part denied all the allegations and said it was the nominal complainant in company of some of his good friends, (including Mr. Smith) through PW2 that went to the Accused person. Specifically, the Accused said what he received from the nominal complainant is N5,000,000.00 as a gift which evidence is nowhere rebutted.

On the allegation of forgery, it was submitted that the Prosecution have no power to prosecute the said allegation as the function of the Economic and Financial Crimes Commission (EFCC)

is derived from Section 5(1b) of the EFCC Act which does not cover the power to try the offence of forgery. Also Exhibit 'C' does not fall under the meaning of forged document as contemplated by the above Section. Thus, the cumulative effects of Section 5 of the EFCC Act and Section 1(2c) of the Miscellaneous Offences Act conferred jurisdiction to try offences in relation to negotiable instruments of which for all intent and purposes does not include Exhibit 'C'.

Also on the allegation of false declaration of assets by failing to disclose the ownership of a plot of land lying and situate at No.6 Road B, TPO 633, Doka, Kaduna, it was submitted that the Prosecution have not shown that the Accused person rightly owns the property which he has refused to disclose. Reliance was placed on Exhibits 'G' and 'G1' indicating that the land in issue initially belongs to Suleiman Mohammed Zwu who apply for Statutory Consent to assign to Yusuf Bamalli.

It was further contended on behalf of the Defence that there are material contradiction in the evidence in the evidence of PW1, PW3 and PW4. For instance, PW1 said he is not aware of N10Million

given to the Accused. Similarly, PW1 said he delivered N50Million to the Accused and during Cross Examination, he said he did not know the purpose for which the money was meant for. Nonetheless, PW3 said he initiated this case based on an information he got from PW1. Furthermore, PW4 stated that he personally gave the Accused the sum of N10Million as well as \$320. That where there are contradictions in the testimonies of witnesses on the material fact, the case for the Prosecution is not proved beyond reasonable doubt. Reliance was placed on *Ibeh Vs State (1997) 1 NWLR (Prt. 484)* and *Onochukwu Vs State (1998) 4 NWLR (Prt. 547)*. Also the inability of the Prosecution to call either the Vice President or the Chairman of EFCC goes to show that they did not discharge the burden of proof placed on them beyond reasonable doubt. The Court was therefore urged to discharge and acquit the Accused person.

On the part of the Prosecution, a sole issue was identified for determination and that is, whether the Prosecution has proved its case beyond reasonable doubt as required by Section 135 of the Evidence Act, 2011.

Learned Prosecuting Counsel, Mr. Emumejakpor contended that the Law does not necessarily require the physical presence of the two because the offence could be committed by communication, relying on *Erim Vs State (1994) 5 NWLR (Prt. 346) 522 at 533*.

That PW4 gave evidence to the effect that Mr. Smith was a friend of the Accused and he knew the Accused through Mr. Smith as it was Mr. Smith that introduced him to the Accused and that they went to the Accused's House together. And both the Accused and Mr. Smith were working together. This piece of evidence according to the Prosecuting Counsel was not challenged and therefore accepted by the Accused person. Reliance was placed on *Offorlete Vs State (2000) 12 NWLR (Prt. 681) 415 at 436* to the effect that where there is unchallenged evidence, the Court is not only entitled to act on or accept such evidence but it is in fact bound to do so provided that such evidence by its very nature is not incredible. Also the evidence of the Accused corroborated that of the PW4 to the effect that Smith was present when PW4 gave him the money. Thus, the subsequent denial is an afterthought and also inconsistent with his Extra Judicial Statement. Reliance was placed

on *Omini Vs State* (1992) 12 NWLR (Prt. 630) 168 and *Akpan Vs State* (2001) 15 NWLR (Prt. 737) 745 in urging the Court to disregard the evidence of the Accused in that regard. Thus, it was submitted that the Accused and Mr. Smith conspired and worked in tandem in demanding the money knowing fully well that they could not deliver on their promises.

Respecting the allegation of false declaration, reliance was placed on Exhibit 'K' and the testimony of PW8 to the effect that the Accused purchased a Plot of land lying and situate at Plot No.6 Road "B", TPO 633, Doka, Kaduna from one Abubakar Yusuf Bamalli for the sum of Twenty Four Million Naira. That the agreement was duly signed and witnessed by PW6. Further reliance was placed on Exhibit 'J1', the Sale Agreement. Also the Accused paid Fifteen Million Naira to PW5 in respect of Plot No.8 and 8A, Road B, TPO 633, Doka Road, Kaduna. Nonetheless, in Exhibit 'K', the Accused wrote "Not applicable"/None in the column of land/building. Thus, the Sale Agreement Exhibit 'J1' *ipso facto* passed title or at least created some form of interest on the Accused person. That the

issue for registration in the land registry according to Prosecuting Counsel is a matter for the Accused person.

As to whether the Prosecution have the power and/or jurisdiction to arraign/prosecute the Accused for the offence of forgery before this Court, reliance was placed on Sections 5 and 7(2) of the EFCC Act to the effect that the EFCC is not limited to Economic Crimes but can prosecute matters under the Criminal Codes and Penal Code including forgery. Further reliance was placed on *FRN Vs Nvene (2010) ECLR Vol. 1 Page 1 at 13 to 18*. Reliance was also placed on *Nigerian Air Force Vs James (2002) 18 NWLR (Prt. 789) 295* to the effect that forgery occurs when a document tell a lie about itself and it is proved where the lie is exposed and confirmed.

On the allegation of obtaining by false pretence, Mr. Emumejakpor submitted that the pretence emanated from the Accused person's claims that he could facilitate a meeting between PW4 and the Vice President and also ensure that PW4 got the Governorship Ticket for Kogi State. The Accused knew it was false

and that he could not make it possible. As to the Defence argument regarding inconsistency and or discrepancies between the evidence of PW1 and PW4, it was submitted that there was no contradiction whatsoever as PW1 said he did not know what the money was meant for and PW4 said he did not tell PW1 what the money was meant for. In essence, PW4's account corroborates PW1. That in considering a case where contradictions have been recorded in the evidence of the witnesses, it is important to always assess the materiality of those contradictions to the case presented. This is because contradictions which do not affect the substance of the issue to be decided are irrelevant, relying on *Isibor Vs State (2004) 4 NWLR (Prt. 758) 741 at 757* and *Igbi Vs State (2003) 3 NWLR (Prt. 648) 169*.

It was finally submitted that on the strength of these cogent and compelling evidence which irresistibly show that the Accused demanded N10Million and N50Million and that he did not carry out what he claimed he would do, the offence of obtaining by false pretences has also been made out by the Prosecution. In all, the Court was urged to convict the Accused person as charged.

The sole issue for determination in this case is:

Whether the Prosecution has proved the guilt of the Accused person beyond reasonable doubt.

As stated from the onset, that the Accused allegedly conspired and obtained money from the nominal complainant under false pretences. That he equally forged certificate and also made false declaration of assets.

It is trite that in a Criminal Trial, the onus is upon the Prosecution to prove the elements which go to make up the offence alleged. Where it fails to prove any of them, the Accused is entitled to an acquittal and if in spite of that he is convicted, he is entitled to have the conviction quashed on appeal.

In Count One of the Amended Charge, the Accused allegedly conspired with one Mr. Smith (now at large), to obtain money by false pretence from the nominal complainant, Dr. Shuaibu Sani

Teidi. In his evidence as PW4, the nominal complainant gave graphic account on how the said Mr. Smith introduced him to the Accused wherein they discussed his political ambition, that is, he solicited the support of the Vice President for a Governorship Ticket for Kogi State. He also sought for the facilitation of his clearance with Farida Waziri, the then Chairman of Economic and Financial Crimes Commission (EFCC). That on various occasions, the Accused kept sending text messages to him on the transaction between him and the former Chairman of the EFCC and the Vice President. The Accused's telephone number is 0803650441. When the Accused collected the money and refused to utilize it for the purpose it was given, the Accused ignored all his calls.

On his part, the Accused as DW1, acknowledged knowing the nominal complainant through one Muhammad Auwal, alias Kada "Payless" and that the nominal complainant came to him with his friend Mr. Smith wherein PW4 was introduced to him as a Governortorial Aspirant in Kogi State. That they solicited his cooperation in urging the Vice President Namadi Sambo to assist him in that endeavour. But when cross examined, the Accused as

DW1 admitted knowing Mr. Smith prior to the time when Mr. Smith introduced the nominal complainant to him. Even though, the Accused denied that Mr. Smith was prompting for him; it was Mr. Smith that introduced the nominal complainant to the Accused person. It is also imperative to note that DW2 told the Court that he was the one that introduced Mr. Smith to the Accused and that Mr. Smith used to go to the Accused person. Thus, the evidence of the Accused to the effect that Mr. Smith visited him once is far from the truth. In *State Vs Oladimeji (2003) 7 SC 108 at 114*, the Supreme Court held that when two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another and in the prosecution of each purpose, an offence is committed of such a nature that its commission was a probable consequence of the prosecution of such purpose, each of them is deemed to have committed the offence.

Also in *Oladejo Vs State (1994) 6 NWLR (Prt. 348) 101 at 127*, it was *inter alia* held that there must be a meeting of the minds to commit the offence and where the evidence on record does not reveal any agreement on the part of the Accused, the charge of

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conspiracy is not made out. Nonetheless, in view of its peculiar nature, conspiracy is seldom proved by direct evidence. In effect, conspiracy is often established through inference from the acts of the parties who may not even have met. The totality of the evidence before this Court established common agreement between the Accused and Mr. Smith to obtain money from the nominal complainant albeit by false pretences and hence, the allegation of conspiracy is proved.

The substance of Counts Two and Three of the Charge are that the Accused and one Mr. Smith (now at large) did with intent to defraud, obtained the sum of N10Million and N50Million by false pretences from the nominal complainant. The evidence of PW1 is that he handed over the money to the Accused. He stated thus:

"I went to together with the orderly James on the directives of my boss Dr. Sani Shuaibu. My boss Dr. Sani Shuaibu gave us money in Dollars to give to the Accused. I knocked at the door and I was allowed entrance and handed over the money to the Accused. I do not know the exact money in Dollars domination but my boss told

me that it was equivalent to N50Million. The Accused having collected the Dollars from me then asked the exchange rate to which I said I do not know. He rejected the money saying that if he is to exchange it here in Kaduna, it would not be up to N50,000,000.00 and hence directed me to take it back to my boss Dr. Sani Shuaibu which I did. The next day upon coming back to my boss, he said I am going to Kaduna to take the Naira equivalent. I left alone to Kaduna around 8:00pm wherein I drove to his house and that the money was shared into three (3), that is, Two Cartoons and a Ghana Must Go Bag. I took same to the Accused's parlour where myself and the Accused loosed everything. We counted the money one after the other and the money was intact; that is, N50,000,000.00. At that moment, I called my boss to confirm delivering the money intact to the Accused. I then gave the phone to the Accused and they spoke with my boss confirming the receipt of the money. We used my GSM. I arrived at the Accused's residence after 10:00pm. I went back to Abuja around 1:00am".

It is instructive to note that PW1 was never cross examined on this piece of evidence. PW1 emphatically said he went to the residence twice, one with his boss and later with the orderly. Thus, in the previous visit with his boss, himself and the orderly remained inside the vehicle. This tallies with the evidence of PW4 to the effect that in their previous visit to the Accused person only himself entered the house as the Driver remained outside. PW4 said he handed over the N10Million to the Accused personally whereas the N50Million was given to the Accused through PW1. This is more consistent than the evidence of the Accused as DWI wherein he said:

“I promised talking to the Vice President whenever he calls as he calls regularly. He went out and called back the Driver to my sitting room. He instructed him to bring gift wherein the Driver brought Ghana Must Go containing N5Million. He gave it to me as a gift...”

The Court has evaluated the testimony of DW2 in respect of the gift of N5Million by the nominal complainant to the Accused person. DW2, Mohammed Lawal testified that Mr. Smith once told him that he went to the Accused along with Etim Inyang (jnr) and Dr. Shuaibu in which Dr. Shuaibu gave him N5Million.

In *Olabode Vs State (2008) 2 NWLR 167 at 176*, it was held that oral evidence must, in all cases whatsoever, be direct and if it refers to a fact that could be heard, it must be the evidence of a witness who says he heard that fact. To that extent, the evidence of DW2 respecting the gift of N5Million is, to say the least, hearsay and inadmissible. Refer also Section 38 of the Evidence Act No.18 of 2011.

As stated earlier in this Judgment that the substance of Counts Two and Three of the Charge relates to obtaining money by false pretence. The provision of Section 1(2) of the Advanced Fee Fraud and Other Related Offences Act, 2006 provides that:

“(2) A person who by false pretence, and with intent to defraud, induces any other person in Nigeria or in

any other Country, to confer a benefit on him or on any other person by doing or permitting a thing to be done on the understanding that the benefit has been or will be paid for, commits an offence”.

Note also that the word “false pretence” is defined in Section 20 of the Act to mean “a representation whether deliberate or reckless made by word, in writing or by conduct, of a matter of fact or law, either past or present, which representation is false in fact or law, and which the person making it knows to be false or does not believe to be true”.

From the totality of the evidence placed before the Court, the Accused person has made a representation which was in fact false, as a result of that representation, the nominal complainant was made to part away with the sum of N10Million and N50Million respectively. In *Ada Vs State (2008) 13 NWLR (Prt. 1703) 149 at 167*, the Supreme Court held that a Trial Court will fail in its duty if it fails, refuses and/or neglects to convict on the evidence of the Prosecution which is unchallenged and uncontroverted.

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The Defence has alluded that there is a full of contradiction between the evidence of PW1 and that of PW3 and PW4 to the effect that PW1 said he is not aware of the N10Million given to the Accused. Where it is suggested that a piece of evidence casts some doubt on the Prosecution's case, it is helpful to show, unless such is evident, what aspect of the case becomes doubtful by reason of the evidence. See *Igbi Vs State (2000) 3 NWLR (Prt. 648) 169*. In this case, it is plainly illogical to say that the mere fact that PW1 said he is not aware of the N10Million given to the Accuse casts doubt on the evidence of PW4 who unequivocally said that he handed over the N10Million personally to the Accused person.

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I have earlier in this Judgment held the view that the evidence of PW1 is consistent with that of PW4, that the N10Million was not given in the presence of PW1 who was waiting in the vehicle along with James, the orderly. At any rate, not all contradiction affects the substance of the issue to be decided. Thus, the contradictions must be shown to amount to a substantial disparagement of the witness or witnesses concerned, making it unsafe to rely on such

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witness or witnesses. In this case, there was no contradiction not to talk of its materiality. Also the failure by the Prosecution to call as witnesses the Vice President and Mrs. Farida Waziri does not affect their case.

Having arrived at the conclusion that the Accused had made representation albeit falsely and thus induced the nominal complainant to confer some benefit on him, the next germane issue is whether the Accused has failed to disclose his interest in some properties as required by Section 27 of the EFCC Act and also forged a Statement of Result.

The provision of Section 27(1) of the Economic and Financial Crime (Establishment) Commission Act, 2004 provides:

“(1) Where a person is arrested for an offence under this Act, it shall be obligatory for such person to make full disclosure of all his assets and properties by completing the Declaration of Assets Form as specified in Form A of the Schedule to this Act”.

Subsection 3 thereof provide as follows:

“(3) Any person who-

- (a) Knowingly fails to make full disclosure of his assets and liabilities, or
- (b) Knowingly makes a declaration that is false, or
- (c) Fails to answer any question, or
- (d) Fails, neglects, or refuses to make declaration or furnish any information required in the Declaration of Assets Form, commits an offence under this Act and is liable on conviction to imprisonment for a term of ten years”.

The allegation against the Accused in this case is that he fails to declare or disclose the ownership of a plot of land lying and situate at No.6 Road B, TPO 633, Doka, Kaduna. The Accused vide Exhibit 'K', completed the relevant Declaration of Assets Form and in item 19(i)(ii) which are columns for land and building, he stated “Not applicable/None”. Also in evidence, PW2 has told the Court that in the course of investigating the case they stumbled on a text message wherein on Engineer Aminu Umar complained to the

Accused of a short-payment of N50,000.00 And when confronted, the Accused said it was in respect of an inheritance he was advising. Nonetheless, the said Engineer Aminu Umar when confronted said the short-payment was in respect of N15Million advanced payment for the purchase of land valued at N75Million. Also sequel to the search conducted, they recovered from the Accused numerous documents which include payment of ground rent Exhibit 'E' and 'F'. And vide Exhibit 'G', the commission wrote to the Director of Lands Kaduna State inquiring about Plot No.6 B on TPO 633, Doka, Kaduna. The result of the said inquiry revealed that the holder, one Suleiman Mohammed Zwu has applied for Statutory Right of Occupancy on 16th of August, 1991 and it was approved on 20th December, 1991. However, the holder has applied for Statutory Consent to assign his interest in the property in favour of Abubakar Yusuf Bamalli which consent to assign has not been perfected by the Applicant. Refer to Exhibit 'G1'. By Exhibit 'J', a Sale Agreement between Abubakar Yusuf Bamalli and Muhammad Al-Ameen Al-Haleel, Plot No.6 Road B TPO 633, Doka, Kaduna was sold to the Accused by the said Abubakar Yusuf Bamalli at the cost of N24,000,000.00 the payment of which the vendor acknowledges.

Also PW5, Engineer Aminu Umar testified that the Accused bought a land from him for 30Million in which an advance payment of N15Million was made though he later noticed a short fall. Thus, the agreement has not been consummated as he contacted someone to sell up the said land. It is also apparent from the evidence of PW7 that they wrote to the Ministry of Lands Kaduna to confirm the true ownership of the land only to find out that since the original allocation, no further change of ownership was made.

Learned Prosecuting Counsel has submitted that the Sale Agreement, Exhibit 'J1' *ipso facto* passed title or at least created some interests on the Accused who should have declared same in the Assets Declaration Form. That in my view cannot be the position of the law on the face of the clear and unequivocal provision of Section 22 of the Land Use Act Cap L5 LFN 2004 which prohibited the alienation of statutory right of occupancy without the consent of the Governor. Refer *Iragunima Vs River State Housing Property Development Authority* (2003) 12 NWLR (Prt. 834) 427 at 441.

On the allegation of forgery, reliance was placed on Sections 5 and 7 of the EFCC Act by both Counsel in support of their respective contentions. The provision of Section 5 of the Act deals with functions of the Commission while Section 7 provides for additional powers on the commission to coordinate other agencies for the enforcement of other Economic and Financial Crimes. From the evidence before the Court, especially Exhibits 'C', 'C1', 'C2' and 'D1', the National Diploma in Electrical Engineering has been verified and confirmed to be forged. Forgery connotes to making of a false document or writing, knowing it to be false and with intent to be used or acted as genuine. The borne of contention is whether the EFCC can prosecute the Accused for forgery before the Federal High Court. The Provision of Section 3(2)(a) of the Special Tribunal/Miscellaneous Offences Act confers jurisdiction for offences of forgery and altering negotiable instruments on the miscellaneous offences tribunal created in Section 1(1) of the Act. Nonetheless, the Tribunal (Certain Consequential Amendment) Decree No.62 of 1999 transferred the jurisdiction hitherto been exercised by the Miscellaneous Tribunal to the Federal High Court. By virtue of Section 1(1) of the Miscellaneous Offences Act Cap M17

LFN 2004, which unequivocally states that the Federal High Court shall have power to try any person for any of the offences specified under the Section and to impose the penalty relating thereto. Thus, the Federal High Court has jurisdiction to try the Accused for the offence of forgery. Refer *FRN Vs Nvene (2005 - 2010) ECLR 1 at 14*.

I have held elsewhere in this Judgment that the document in question was forged and the totality of the evidence has shown that same have been altered knowingly by the Accused. Thus, the Prosecution who are by virtue of Section 7(2)(e) of the EFCC Act empowered to coordinate the enforcement of the provisions of Miscellaneous Offences Act have the jurisdiction to prosecute the offence of forgery in this Court. Likewise, the Federal High Court has the corresponding jurisdiction to try the offence.

In the light of the foregoing, the Prosecution has proved the allegation of conspiracy, obtaining by false pretences and forgery against the Accused person. The Accused is accordingly found guilty on the said counts of charge. He is however discharged and

acquitted on Count Six relating to the failure to disclose his interest on the properties.



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JUSTICE M. L. SHUAIBU
JUDGE
12/07/2012

Sentence: The Convict being a first offender is hereby sentenced to Three Years imprisonment on Count One, Two, Three, Four and Six of the Charge. The sentence shall nonetheless run concurrently with effect from 31st January, 2011.



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JUSTICE M. L. SHUAIBU
JUDGE
12/07/2012